HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeal Nos.2045, 2267 of 2003

And

Writ Appeal No.1305 of 2004

Writ Appeal No.2045 of 2003

Between:

D.B. Narendra Babu … Appellant

And

B.H. Sudhir Varma & others

… Respondents

Counsel for the appellant : Sri E. Manohar, Senior Advocate assisted by Sri P. Kamalakar.

Counsel for respondent No.1: Sri S. Ravi, assisted by

Sri R.V. Nagabhushana Rao

Counsel for respondent : Sri Y.N. Lohita

Nos. 2 to 4.

Writ Appeal No.2267 of 2003

Between:

A.P.State Financial Corporation,

Represented by its Managing Director and another

… Appellants

And

B.H. Sudhir Varma & others

… Respondents

Counsel for the appellants : Sri Y.N. Lohita

Counsel for respondent No.1 : Sri S. Ravi assisted by

Sri R.V. Nagabhushana Rao

Counsel for respondent No.2 : Sri G. Pedda Babu

Counsel for respondent No.3 : Sri E. Manohar, Senior Advocate

asssisted by Sri P. Kamalakar.

-

Writ Appeal No.1305 of 2004

Between:

M/s.Wonder Makers rep. by its Managing Partner

L. Krishna Reddy … Appellant

And

B.H. Sudhir Varma & others

… Respondents

Counsel for the appellant : Sri Dr. P. B. Vijay Kumar

Counsel for respondent No.1 : Sri S. Ravi, assisted by

Sri R.V. Nagabhushana Rao

Counsel for respondent : Sri Y.N. Lohita.

Nos.2 and 3.

Counsel for respondent No.4: Sri G. Pedda Babu

Counsel for respondent No.5: Sri E. Manohar, Senior Advocate assisted by Sri P. Kamalakar.

-

-

::JUDGMENT::

-

-

-

-

-

-

April , 2006

Per G.S. Singhvi, CJ

Whether Andhra Pradesh State Financial Corporation (for short 'the Corporation') could, in exercise of the power vested in it under Section 29 of the State Financial Corporations Act, 1951 (for short 'the Act'), sell the property of respondent No.1 – B.H. Sudhir Varma without giving him adequate and effective notice is the question which arises for determination in these
appeals filed against order dated 26-9-2003 passed by the learned Single Judge whereby he allowed the writ petition filed by respondent No.1 and quashed the sale proceedings.

For deciding the aforementioned question, it will be useful to notice the relevant

facts:

(i) On an application made by M/s Kethaki Cements Private Limited (hereafter referred to as 'the Company'), the Corporation sanctioned a term loan of Rs.73.25 lakhs in its favour for setting up Clinker Grinding Cement Unit at Hayathnagar, Ranga Reddy District. For securing repayment of loan, the company executed a mortgage deed and a deed of hypothecation in respect of the land, buildings, plant and machinery of the Unit. Respondent No.1-B.H.Sudhir Varma provided collateral security by executing mortgage of Plot bearing No.443, A21, H.No.8-2-293/82/J-III/443/A/21 comprised in Survey Number 120 (new) of Shaikpet Village and 101/1 of Hakimpet Village admeasuring 964 square yards situated at Road No.86, Jubilee Hills Cooperative House Building Society Limited, Hyderabad. Sri S.R.K.K. Ranga Raj Bahadur, Promotor Director of the company also provided collateral security in the form of his agricultural land.

(ii) In terms of the conditions of sanction, the company was required to repay the loan as per the schedule fixed by the Corporation, which it failed to do. After some correspondence, the Corporation agreed to the company's proposal for one time settlement on the condition that the latter pays a sum of Rs.93.50 lakhs against the total liability of Rs.149.98 lakhs. The company was also asked to make a down payment of Rs.7.50 lakhs within seven days to prove its bona fides.

(iii) On account of the company's failure to take steps necessary for facilitating one time settlement, the Corporation initiated proceedings under Section 29 of the Act. Vide letter dated 17-1-2003, the Corporation informed respondent No.1 and other guarantors about the proposed sale of primary as well as collateral securities. Thereafter, an advertisement was got published in two newspapers i.e., "Eenadu" and "Economic Times" dated 18-1-2003 for sale of the properties of the company and respondent No.1. In both the newspapers, identity of the property was correctly given, but in the column of 'owner' the following name was printed:

a. B.H. Sundara Sarma – 'Eenadu'

b. B.H. Sudhir Sarma – 'Economic Times'

(iv) In response to the advertisement, the Corporation received three bids. Sri D.B.Narendra Babu, who is appellant in Writ Appeal No.2045 of 2003, gave the highest bid of Rs.43.40 lakhs. His offer was considered by the Sale Negotiation

Committee of the Corporation and it was decided to put the offer on the notice board of the Corporation for inviting improved offers.

(v) As a result of further negotiations, Sri D.B. Nagendra Babu gave revised offer of Rs.46.25 lakhs. The Corporation, vide its letter dated 12-3-2003, accepted the bid of Sri D.B. Narendra Babu and called upon him to pay the balance amount of Rs.44.25 lakhs by 20-3-2003. The latter deposited the amount with the Corporation.

(vi) The possession of the plot was handed over to Sri D.B. Narendra Babu on 29-3-2003. After sometime, he informed the Corporation that actual size of the plot was 894 square yards and not 964 square yards, as indicated in the advertisement. He requested that the excess amount paid by him be refunded. The Corporation accepted his plea and refunded Rs.5,99,714/-.

(vii) On 20-6-2003, sale deed was got registered in favour of Sri D.B. Narendra Babu. On the very next day, he entered into an agreement of sale with M/s.Wonder Makers (appellant in Writ Appeal No.1305 of 2004) and received part payment in lieu of sale of the property.

(viii) In the meanwhile, respondent No.1, vide his letter dated 12-5-2003, offered to pay a sum of Rs.46 lakhs, but his request was turned down by the Corporation on the premise that bid of Sri D.B. Narendra Babu has been confirmed.

Having failed to persuade the Corporation to accept his offer, respondent No.1 filed Writ Petition No.10885 of 2003 questioning the sale of his property. In the affidavit filed by him, respondent No.1 averred that the action taken by the Corporation to sell the collateral security before selling the primary security offered by the company was wholly arbitrary and unjustified. He further pleaded that the sale proceedings are vitiated due to violation of the rules of natural justice because he had not been put to notice about the proposed sale of the property. Still further, he averred that the authorities of the Corporation deliberately got his name wrongly printed in the column of 'ownership' and thereby prevented him from taking steps to save the property. He alleged that the Corporation had arbitrarily accepted the offer of Sri D.B. Narendra Babu, which was far less than the actual value of the property. He also relied on stay order dated 25-2-2003 passed by IV Senior Civil Judge, City Civil Court, Hyderabad in I.A.No.312 of 2003 (O.S.No.376 of 2003 – B.H. Ramakrishna Raju v. A. Jyothirmayee and two others) and averred that in the face of the order of injunction passed by the court of competent jurisdiction, the Corporation could not

have confirmed the sale of his property.

In the counter-affidavit filed on behalf of the Corporation by its Assistant General Manager, Sri E. Chengalarayudu, it was averred that the property of the writ petitioner was sold because the company failed to repay the loan amount. Sri E. Chengalarayudu did not controvert the writ petitioner's assertion that the name of the owner was wrongly printed in the column of ownership, but reiterated that the action taken by the Corporation to sell the mortgaged property was legally correct and justified. In regard to the injunction order passed by IV Senior Civil Judge, City Civil Court, Hyderabad, in I.A.No.312 of 2003, it was stated that the Corporation was not a party to the suit and, therefore, the restraint order was not binding on it.

In his counter-affidavit, Sri D.B. Narendra Babu averred that he was a bona fide purchaser of the property which was put to auction by the Corporation. He averred that O.S.No.376 of 2003 filed by the writ petitioner Sri B.H. Ramakrishna Raju was collusive and was intended to frustrate the proceedings initiated by the Corporation for realization of its dues.

The learned Single Judge allowed the writ petition and quashed the sale of the property of writ petitioner (respondent No.1 herein) by observing that wrong printing of his name in the advertisement was fatal to the sale proceedings. In the opinion of the learned Single Judge, the writ petitioner could have, on being noticed by the Corporation about the proposed sale of the property, taken steps to save his property either by repaying loan amount or negotiating one time settlement or by participating in the auction proceedings by bringing persons who could offer better price. The learned Single Judge also took cognizance of the fact that the property of the appellant had been valued at Rs.63.68 lakhs, but the Corporation accepted the bid of Rs.46.25 lakhs given by Sri D.B. Narendra Babu, which was, later on, reduced to Rs.41.25 lakhs.

Sarvasri E. Manohar, Senior Advocate, Y.N. Lohita and Dr.P.B. Vijay Kumar, learned counsel for the appellants argued that the reasons assigned by the learned Single Judge for nullifying the sale of the property of respondent No.1 are legally untenable and the order under challenge is liable to be set aside because before putting the property for sale, the Corporation had given ample opportunity to respondent No.1 to arrange for repayment of the loan. Learned counsel emphasized that respondent No.1 was, through and through, aware of the action initiated by the

Corporation for sale of the collateral security for recovery of its dues and argued that misprinting of the name of the owner in the advertisements published on 18-1-2003 was inconsequential because he had not been prejudiced on that account. Another argument of the learned counsel for the appellants is that the injunction order obtained by respondentNo.1 in the collusive suit filed through his father was not binding on the Corporation and it did not commit any illegality by accepting the bid of Sri D.V. Narendera Babu. In support of their argument, learned counsel relied on the judgment of the Supreme Court in **State Financial Corporation vs. M/s. Jagadamba Oil Mills Ltd.**.

Learned counsel for the Corporation pointed out that valuation of the plot belonging to respondent No.1 was Rs.50.61 lakhs and not Rs.63.68 lakhs, as mentioned in the order of the learned Single Judge. He further submitted that refund of Rs.5,99,714/- to the highest bidder was necessitated because actual size of the plot was found to be 894 square yards only. Learned counsel relied on the judgment of the Single Bench in **Aditya Pharmaceuticals (P) Limited v. A.P.State Financial Corporation** and argued that the sale of the property effected after complying with all the formalities and giving adequate opportunity to respondent No.1 to repay the loan amount should not have been annulled by the learned Single Judge on the spacious plea that the name of the owner had not been correctly described in the advertisement.

Sri S. Ravi, learned counsel for respondent No.1 supported the order under challenge and argued that the learned Single Judge rightly annulled the sale proceedings because the Corporation did not give reasonable opportunity to his client to arrange for repayment of loan or to participate in the auction proceedings. Learned counsel emphasized that arbitrary nature of the sale proceedings conducted by the Corporation is evinced from the fact that, as per valuation report got prepared by the Corporation, the plot in question was priced at Rs.50.61 lakhs, but, without any tangible reason, the authorities concerned accepted the bid of Rs.46.25 lakhs given by Sri D.B. Narendra Babu and, later on, reduced the price by Rs.5,99,714/- on the pretext that the size of the plot was 894 square yards, and not 964, as indicated in the mortgage deed. He then argued that the Corporation's refusal to accept the offer of Rs.46 lakhs made by respondent No.1, vide letter dated 12-5-2003, was wholly arbitrary, unjustified and contrary to public interest because,

as on that date, the offer of Sri D.B. Narendra Babu was to that of Rs.41.25 lakhs only.

We have thoughtfully considered the respective arguments. The ambit and scope of the power vested in the Corporation under Section 29 of the Act to takeover the management or possession or both of the industrial concern and realize the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation was considered by the Supreme Court in **Mahesh Chandra v. Regional Manager, U.P. Financial Corporation**, **U.P. Financial Corporation v. Gem Cap (India) Pvt. Ltd.**, **U.P. Financial Corporation and others v. Naini Oxygen & Acetylene Gas Ltd., K.S.F.C. v. Micro Cast Rubber & Allied Products (P) Ltd.** and more recently in **State Financial Corporation v. M/s. Jagadamba Oil Mills** (supra), **S.J.S.Business Enterprises (P) Ltd. v. State of Bihar** and **Karnataka State Industrial Investment & Development Corpn. Ltd. v. Cavalet India Ltd.**

In **Mahesh Chandra**'s case (supra), the Supreme Court recognized the wide amplitude of the power conferred on the Corporation under Section 29 and observed that while exercising that power, the Corporation should not cause undue hardship to the borrower. The Supreme Court also issued the following directions for guidance of the Corporation while exercising power under Section 29:

> "Every endeavour should be made, to make the unit viable and be put in working condition. If it becomes unworkable:
>
> (1) Sale of a unit should always be made by public auction.
>
> (2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.
>
> (3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.
>
> (4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.
>
> (b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by (sic many) normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account."

The aforementioned judgment in **Mahesh Chandra**'s case was overruled by a three Judges Bench in **State Financial Corporation v. M/s.Jagadamba Oil Mills Ltd.,** (supra), and it was held that the Corporation is entitled to take all steps necessary for recovery of public dues. This theme is evinced from the following observations:

"The Corporation as an instrumentality of the State deals with public money. There can be no doubt that the approach has to be public-oriented. It can operate effectively if there is regular realization of the instalments. While the Corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as per the scheduled time-frame, it will disturb the equilibrium of the financial arrangements of the Corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the instalment by a defaulter may stand in the way of a deserving borrower getting financial assistance.

Though the Corporation is not like an ordinary moneylender or a bank which lends money, there is purpose in its lending i.e. to promote small and medium industries. The relationship between the Corporation and the borrower is that of a creditor and debtor. That basic feature cannot be lost sight of. A Corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to go out of business. As noted above, it has to recover the amounts due so that fresh loans can be given. In that way industrialization, which is the intended object, can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money."

The Supreme Court then reiterated the views expressed in the cases of **U.P. Financial Corporation and others v. Naini Oxygen & Acetylene Gas Ltd.,** (supra) **Micro Cast Rubber and Allied Products (P) Ltd.** (supra) that the Courts should be extremely slow to interfere with the action taken by the Corporation to realize the public dues. The Supreme Court also emphasized the need for ensuring that best price is realized by disposing of the security. Some of the observations made on this issue are extracted below:

> "As was observed in **Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd. {(1995) 4 SCC 595}** in the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at a public auction. In that event, any other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These are aspects which the Corporations have to keep in view while dealing with disposal of seized units." (emphasis supplied)

In **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar** (supra), a two Judges Bench of the Supreme Court referred to the earlier judicial precedents and observed:

> "It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probabilise the abuse of that power. In such event it is for the officer concerned to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the court can assume that the impugned action was improper. **(See Pannalal Binjraj v. Union of India**, **AIR 1957 SC 397 at p.409)** Doubtless some of the restrictions placed on State financial corporations exercising their powers under Section 29 of the State Financial Corporations Act, as prescribed in **Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. {(1993) 2 SCC 279}** are no

longer in place in view of the subsequent decision in **Haryana Financial Corpn. v. Jagdamba Oil Mills {(2002) 3 SCC 496}**. However, in overruling the decision in **Mahesh Chandra** this Court has affirmed the view taken in **Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd. {(1995) 4 SCC 595}** and said that in the matter of sale under Section 29, State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price for the property to be sold.

This can be achieved only when there is a maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price." (underlining is ours)

The Supreme Court further observed:

"Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subject-matter of sale is of such a nature which requires immediate disposal, an opportunity must be given to the possible purchaser who is required to purchase the property on "as-is-where-is basis" to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required."

In **Karnataka State Industrial Investment & Development Corpn. Ltd. v. Cavalet India Ltd.** (supra), the Bench headed by Y.K. Sabharwal, J (as His Lordship then was), after noticing the ratio of the judgments of **Naini Oxygen & Acetylene Gas Ltd.,** (supra), **Micro Cast Rubber & Allied Products (P) Ltd.** (supra), and **Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd.**, culled out the following principles:

"(i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the Financial Corporation and seek to correct them. The doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.

(ii) In a matter between the Corporation and its debtor, a writ court has no

say except in two situations:

(a) there is a statutory violation on the part of the Corporation, or

(b) where the Corporation acts unfairly i.e. unreasonably.

(iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.

(iv) Unless the action of the Financial Corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Financial Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable.

(v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adopted.

(vii) The Financial Corporation is always expected to try and realise the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of the seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the Financial Corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the Financial Corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price."

Having noticed the relevant statutory provision and legal principles, we may now revert to the facts of the case on hand. Admittedly, respondent No.1 had offered his plot as a collateral security for the loan advanced to the company. It is also not in dispute that the company failed to repay the loan and efforts made by the Corporation for one time settlement did not yield the desired result and, therefore,

the Corporation decided to sell the primary as well as collateral security. For this purpose, the properties were got valued. The plot in question was valued at Rs.50.61 lakhs. Thereafter, the Corporation got published advertisement in two newspapers dated 18-1-2003. Only three persons gave their bids for the plot of respondent No.1. Sri D.B. Narendra Babu gave highest bid of Rs.43.40 lakhs, which was later on enhanced to Rs.46.25 lakhs. His bid was accepted in March 2003 and possession of the plot was handed over on 29-3-2003. Soon thereafter, the bidder represented for reducing the price by asserting that size of the plot was 894 square yards and not 964 square yards, as projected in the advertisement. The Corporation accepted his claim and refunded Rs.5,99,714/-. Respondent No.1 could not participate in the sale proceedings. The record of the case shows that before initiating exercise for sale of the mortgaged property, the Corporation did issue letter to the company and respondent No.1 requiring them to repay the loan. However, before putting up advertisement, the Corporation did not call upon respondent No.1 to arrange for repayment of loan with an indication that his property is likely to be sold. That apart, due to non-printing of his name in the column of ownership, respondent No.1 could not get opportunity to offer to repay the whole or part of the amount due from the company or to participate in the sale proceedings either by himself or by bringing other bidder. Notwithstanding this, he, vide letter dated 12-5-2003, offered to pay Rs.46 lakhs, which was Rs.5 lakhs more than the amount deposited by Sri D.B. Narendra Babu. The Corporation did not accept his offer, albeit without assigning any tangible reason, and got the sale-deed registered in favour of Sri D.B. Narendra Babu on 20-6-2003. If the negligence on the part of the officers of the Corporation in not ensuring correct printing of the name of the owner of the plot in question i.e., respondent No.1 in the advertisement is considered in conjunction with the hush-hush manner in which the Corporation proceeded to accept the bid of Sri D.B. Narendra Babu, which was almost Rs.5 lakhs less than the valuation of the property got done by none else than the Corporation itself, the factum of refund of Rs.5,99,714/- to the bidder and refusal to accept the offer made by respondent No.1 on 12-5-2003 and registration of the sale-deed in disregard of the fact that acceptance of his offer would have fetched an additional amount of Rs.5 lakhs to the Corporation there is no escape from the conclusion that the exercise undertaken by the Corporation was vitiated not only due to violation of the rule of fairness, which is inherent in the scheme of Section 29 of the Act, but was wholly arbitrary and unreasonable and the same resulted in loss of at least Rs.5 lakhs to

the Corporation. Therefore, we do not find any valid ground to interfere with the order under challenge.

In the result, the appeals are dismissed. However, it is made clear that it shall be open to the Corporation to undertake fresh exercise for sale of the property mortgaged by respondent No.1.

In order to test the bona fides of respondent No.1, we direct him to deposit a sum of Rs.5 lakhs with the Corporation within a period of one month from today. This shall be condition precedent to his participation in the fresh proceedings, which may be conducted by the Corporation for disposal of the collateral security furnished by him.

G.S. SINGHVI, CJ

R. SUBHASH REDDY, J

April 24, 2006

Svs/vtv/svs